



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAR 24 2015

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for U Nonimmigrant Classification as a Victim of a Qualifying Crime Pursuant to Section 101(a)(15)(U) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(U)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law or establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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NON-PRECEDENT DECISION

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DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the U nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks nonimmigrant classification under section 101(a)(15)(U)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(U)(i), as an alien victim of certain qualifying criminal activity.

The director denied the petition because the petitioner did not establish that he was a victim of qualifying criminal activity. On appeal, the petitioner submits a brief, police records, copies of sections of the New York Penal Law, documentation from the New York Office of Victim Services, and a psychosocial report.

Applicable Law

Section 101(a)(15)(U) of the Act provides, in pertinent part, for U nonimmigrant classification to:

(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that --

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien . . . possesses information concerning criminal activity described in clause (iii);

(III) the alien . . . has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States[.]

....

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage;

peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes[.]

According to the regulation at 8 C.F.R. § 214.14(a)(9), the term “any similar activity” as used in section 101(a)(15)(U)(iii) of the Act “refers to criminal offenses in which the nature and elements of the offenses are *substantially similar* to the statutorily enumerated list of criminal activities.” (Emphasis added).

We conduct appellate review on a *de novo* basis. The burden of proof is on the petitioner to demonstrate eligibility for U nonimmigrant classification, and U.S. Citizenship and Immigration Services (USCIS) will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence, including the Form I-918 Supplement B, U Nonimmigrant Status Certification (Form I-918 Supplement B). 8 C.F.R. § 214.14(c)(4). All credible evidence relevant to the petition will be considered. Section 214(p)(4) of the Act; *see also* 8 C.F.R. § 214.14(c)(4) (setting forth evidentiary standards and burden of proof).

Facts and Procedural History

The petitioner is a native and citizen of Mexico who claims to have entered the United States in May 1999 without inspection, admission, or parole. In October 2010, the petitioner was the victim of robbery. The petitioner filed the instant Form I-918 U petition on August 2, 2012. The director issued a request for evidence (RFE) to which the petitioner responded with a statement and a mental health evaluation. The director found that the petitioner had suffered substantial physical or mental abuse as a result of the robbery, but found the evidence insufficient to establish that the petitioner was the victim of a qualifying crime. Therefore, the director denied the petition. The petitioner timely appealed the denial of the Form I-918 U petition. On appeal, the petitioner asserts that he was a victim of felonious assault, a qualifying crime, “in furtherance of the robbery.”

Analysis

The relevant evidence submitted below and on appeal fails to establish that the petitioner was a victim of a qualifying crime or criminal activity.

The Form I-918 Supplement B states that second degree robbery was investigated. The crime of robbery is not specifically listed as a qualifying crime at section 101(a)(15)(U)(iii) of the Act. Although the statute encompasses “any similar activity” to the enumerated crimes, the regulation defines “any similar activity” as “criminal offenses in which the nature and elements of the offenses are substantially similar to the statutorily enumerated list of criminal activities.” 8 C.F.R. § 214.14(a)(9). Thus, the nature and elements of the robbery offense must be substantially similar to one of the qualifying criminal activities in the statutorily enumerated list. *Id.* The inquiry, therefore,

is not fact-based, but rather entails comparing the nature and elements of the statutes in question.

Under New York law, “[a] person is guilty of robbery in the second degree when he forcibly steals property and when:

1. He is aided by another person actually present; or
2. In the course of the commission of the crime or of immediate flight therefrom, he or another participant in the crime:
 - (a) Causes physical injury to any person who is not a participant in the crime; or
 - (b) Displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
3. The property consists of a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law.”

N.Y. Penal Law § 160.10 (McKinney 2014). The Form I-918 Supplement B lists the statutory citation for the robbery investigated in this case as “160.10(1),” which corresponds to robbery committed with the aid of another person who is present.

New York law classifies assault in the first and second degree as felonies. Assault in the first degree occurs when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
2. With intent to disfigure another person seriously and permanently, or to destroy, amputate or disable permanently a member or organ of his body, he causes such injury to such person or to a third person; or
3. Under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person; or
4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight therefrom, he, or another participant if there be any, causes serious physical injury to a person other than one of the participants.

N.Y. Penal Law § 120.10. Assault in the second degree occurs when, “[w]ith intent to cause serious

physical injury to another person, he causes such injury to such person or to a third person; or . . . [w]ith intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument,” or when he causes injury to certain protected classes of persons, including but not limited to police officers, health workers, children, school district employees, and the elderly. N.Y. Penal Law § 120.05.

No elements of robbery under N.Y. Penal Law § 160.10(1), the subsection investigated in the robbery crime against the petitioner, are similar to felonious assault under N.Y. Penal Law §§ 120.05 or 120.10. The subsection of the statute investigated in this case involves forcibly stealing property while aided by another person who is present. It does not require any injury to the victim, use of a weapon, or other aggravating circumstance. The Form I-918 Supplement B does not indicate that the crime investigated was felonious assault or robbery with any aggravating circumstances. It also states that the petitioner did not report any injuries. The petitioner asserts on appeal that he was the victim of felonious assault “in furtherance of the robbery” because he was attacked and physically assaulted during the robbery and sustained injuries. However, the certifying official did not indicate on the Form I-918 Supplement B that a qualifying criminal activity was investigated. The proper inquiry is not an analysis of the factual details underlying the criminal activity, but a comparison of the nature and elements of the crime that was investigated with a qualifying crime. See 8 C.F.R. § 214.14(a)(9). The petitioner has not demonstrated that the nature and elements of the crime of robbery investigated in his case, N.Y. Penal Law § 160.10(1), are substantially similar to felonious assault under N.Y. Penal Law §§ 120.05 or 120.10 or any other qualifying crime at section 101(a)(15)(U)(iii) of the Act. Therefore, the petitioner is not the victim of qualifying criminal activity as required by section 101(a)(15)(U)(i) of the Act.

Conclusion

As the petitioner has not established that he was the victim of a qualifying crime or criminal activity, he has failed to show that he can satisfy any of the criteria at section 101(a)(15)(U)(i) of the Act. Therefore, the petitioner is ineligible for nonimmigrant classification pursuant to section 101(a)(15)(U)(i) of the Act and his petition must remain denied.

As in all visa petition proceedings, the petitioner bears the burden of proving his eligibility for U nonimmigrant status. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 214.14(c)(4); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.